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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 8, 1999

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
12<sup>th</sup> Street Lobby, TW-A325  
Washington, D.C. 20554

Re: Ex Parte  
Docket 94-102

Dear Ms Salas:

During the week of February 22, 1999, Fox 5 News televised a story about "dead spots" in wireless coverage areas in New York City (NYC). The story featured a television advertisement for wireless service which depicted a situation in which a frightened young lady, in a car with a dead battery, who was located in a deserted parking lot, in the dark and in the rain, called for help over her wireless phone. Of course, the call got through and the young lady was rescued. In order to test the veracity of these kinds of advertisements, Fox news conducted their own survey of eleven sites in NYC and published the following results: AT&T - calls from ten of the eleven sites were *not completed*; Sprint - calls from six of the eleven sites were *not completed*; Omnipoint - calls from two of these sites were *not completed*; Bell Atlantic - calls from three of these sites were *not completed*. On the street interviews by Fox news established the fact that the public is generally unaware of the existence of "dead spots" in wireless coverage and believes that a wireless phone can always be used to reach 911. We understand that this story generated a very large volume of calls to Fox News from the public with similar complaints. A video tape of that news broadcast is enclosed.

This video tape and its content are further evidence of the extent to which the public has come to believe that wireless phones will bring them the same access to help in an emergency as

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their wireline phones. As Fox news once again established, consumers are at risk because they have been wrongly convinced by wireless carriers to rely on the "safety and security" provided by their wireless phones just as they rely on their wireline phones. Wireless carriers construe Section 22.901(a) of the Commission's rules to mean that they are required to show a map with the outline of their CGSA to the public to illustrate their coverage area. Such maps often imply that they bear the imprimatur of the Commission that service can be expected in the areas shown on the map.<sup>1</sup> Indeed, wireless carriers have and do argue that the Commission has preempted state consumer protection laws by establishing 31 dbu contours as defining the areas within which reliable service can be expected by the public. This standard is (at best) based on predicted mobile coverage, however, more than 98 percent of all phones sold by the wireless carriers and their agents are portables which operate at five times less power than mobiles. Nevertheless, by reason of the Commission's mandate, carriers say, they cannot disclose the "real" coverage maps which are based on actual drive tests and quality of service studies, such as those done by LCC, Safco and Emerald Bay, to the public.<sup>2</sup> This rational has been used as an excuse for a massive advertising campaign that has misled and misinformed consumers about the nature and extent of coverage to portable wireless phones. We think that this wireless carrier created public perception and reliance gives rise to an obligation by the carriers to provide the service promised - be it by network solution which interconnects all carriers and measures the strength of the uplink<sup>3</sup> or a handset-based solution such as the Alliance's Strongest Signal.

The Commission has relied on the competitive nature of the equipment market to give consumers a choice of wireless phones. The equipment market is dominated by the wireless carriers because they directly purchase more than half of the phones manufactured each year.<sup>4</sup> The market incentive for wireless carriers is to handle as few nonrevenue 911 calls as possible (especially from nonsubscribers). Such market incentive is diametrically opposed to the Commission's determination that the public interest requires that wireless phones be able to access the cellular system that will provide the "quickest and most reliable and accurate response" when 911 is dialed. Thus, despite the public demand as shown by Fox News, the market has not

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<sup>1</sup> See for example, LA Cellular map previously filed in this proceeding.

<sup>2</sup> We think that this is a disingenuous argument. However, we suggest that the Commission should disabuse carriers of this notion and, at a minimum, require the disclosure of the limits of a carriers' portable grade of service.

<sup>3</sup> Motorola has apparently mentioned this alternative however, as a practical matter, this solution would cost millions of dollars and take many years to implement - - in other words "it won't happen."

<sup>4</sup> The degree to which this dominance exists is demonstrated by the fact that some manufacturers have been constrained to pay CTIA a fee (we hear of \$5 per phone) to "certify" their equipment. We understand that CTIA's second largest source of revenue is from manufacturers for "certification" of wireless phones.

operated to give the consumers a choice to access which ever cellular system will provide the best channel of communication when 911 is dialed.

We support the Alliance's Strongest Signal proposal in this proceeding because it will connect more 911 calls over more reliable channels of communication than any other proposal before the Commission.<sup>5</sup> We respectfully suggest that the adoption of this proposal is required by the public interest and is necessary to mitigate against the advertised claims that wireless phones can be used "anywhere, anytime" to reach 911 in an emergency.

Sincerely,

  
Carl Hilliard

enc.: video tape

cc w/ enc.: Ms. Karen Brown, Chief of Staff, Chairman Kennard  
Mr. Ari Fitzgerald, Legal Advisor to Chairman Kennard  
Mr. Dan Connors, Legal Advisor to Commissioner Ness  
Ms. Karen Gulick, Legal Advisor to Commissioner Tristani  
Mr. Paul Misner, Chief of Staff and Legal Advisor to Commissioner Furchtgott-Roth  
Mr. Peter Tenhula, Legal Advisor to Commissioner Powell  
Mr. Thomas J. Sugrue, Chief of the Wireless Telecommunications Bureau  
Mr. John Cimko, Chief, Policy Division of the Wireless Telecommunications Bureau

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<sup>5</sup> The Alliance filed its proposal on October 15, 1995. Three years later CTIA came up with Automatic A/B Roaming as an alternative. This alternative always selects the preferred side unless there is *no signal* on that side. This does not solve the poor channel or lock-in problems that have already resulted in death and injury. Indeed, the very timing of CTIA's proposal casts doubt on its credibility.

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*One video cassette.*